

BEFORE THE SUPREME COURT OF THE STATE OF MISSISSIPPI**MISSISSIPPI COMMISSION
ON JUDICIAL PERFORMANCE****PETITIONER****VS.****CASE NO. 2015-JP-00996-SCT****DAVID SHOEMAKE
CHANCERY COURT JUDGE****RESPONDENT**

MOTION TO STRIKE PORTIONS OF THE RESPONDENT'S BRIEF

COMES NOW the Mississippi Commission on Judicial Performance (“Commission”), by and through its Executive Director, Darlene D. Ballard, and files this Motion to Strike Portions of the Respondent’s Brief pursuant to M.R.A.P. Rule 28(l). In support thereof the Commission would show the following:

1. Before delving into the Motion to Strike, Commission counsel feels it necessary to note that Respondent’s brief filed in this cause is riddled with inaccuracies and false statements. Commission counsel would submit that virtually all issues raised in the section entitled “STATEMENT OF UNCONTRADICTED FACTS” refer to contested matters for which evidence was adduced at the hearing from each party, or are sheer unsubstantiated and false allegations of wrongdoing on the part of Commission staff that have no basis in fact. When reviewing a judicial misconduct matter, this Court conducts a “de novo review”¹ and “an

¹*Miss. Comm'n on Judicial Performance v. Sanford*, 941 So.2d 209, 212 (Miss.2006).

independent inquiry of the record”². Commission counsel believes that in doing so, the Court will find that the facts contained in Respondent’s brief are not uncontradicted facts as alleged.

2. It should also be noted, that throughout these proceedings, Respondent and his counsel have repeatedly hurled vitriolic accusations against Commission counsel and staff that are nothing more than falsehoods. In the brief filed by Respondent, it appears that Respondent has taken the lack of civility to a higher level making multiple untruthful statements and allegations against the Commission staff that are disrespectful and contemptuous. Neither in his brief, nor at any hearing in this case, has Respondent presented one shred of evidence to support his theory that his client was lied to by the Commission, tricked or ambushed by the Commission, that documents were wrongfully withheld by the Commission, or that the Commission breached confidentiality in this case. It is submitted that all such statements should be stricken from Respondent’s brief.

3. In addition, Rule 28 (*l*) of the Miss. Rules of Appellate procedure, states that briefs containing disrespectful or contemptuous language toward the trial court shall be stricken from the files. Respondent’s brief contains multiple instances of such language directed toward the Commission as follows:

a) Page 11, Footnote 11 alleges that the Commission misled and trapped Respondent leaving him with no way to defend himself;

b) Page 11, Footnote 12 alleges that the Commission somehow ambushed Respondent and deprived him of his right to counsel;

²*Miss. Comm'n on Judicial Performance v. Boone*, 60 So.3d 172, 176 (Miss.2011) (quoting *In re Removal of Lloyd W. Anderson, Justice Court Judge*, 412 So.2d 743 (Miss.1982)).

c) Page 21, Paragraph 2 and Footnote 26 alleges that the presiding member of the panel became a prosecutor during the hearing and had already determined the outcome before the hearing;

d) Page 22, Paragraph 4 alleges again that the presiding member of the panel acted as a prosecutor;

e) Page 24, Appellee's Point 6 (iii) alleges that the Commission erred by "engaging in conduct that intentionally misrepresented certain matters to Appellee with the intent to deceive Appellee as to counsel's intention with respect to the complaint filed by Newsome and the extent of counsel's investigation thereof";

f) Page 26, 3rd full paragraph, alleges that the Commission mischaracterized facts developed at the hearing and did not pay attention to the incorrect findings of the Committee but rather "rubber stamped" the Committee Findings;

g) Page 28, Footnote 30, alleges again that the Commission withheld documents from Respondent that would have somehow changed his testimony at the show cause hearing;

h) Page 33, Paragraphs 3 and 4, allege that Commission staff engaged in a conspiracy with the FBI to deprive him of his right to counsel and misled him into thinking there was no complaint pending against him regarding the Newsome matter. This is simply untrue;

I) Page 37, incomplete paragraph at top of the page, refers to the indictments of Walker and Teater that are not in evidence in this proceeding;

j) Page 44, last paragraph, alleges that Commission counsel engaged in a "course of deceit and misrepresentation deliberately designed" to mislead Respondent;

k) Page 46, 1st paragraph of the Conclusion, accuses Commission staff of suborning

perjury;

l) Page 47, 1st paragraph, accuses the Commission of misleading and deceiving elected judges, of withholding information from them, violating the rules of the Commission and lying in wait for a judge to make a misstep; and

m) Page 48, last paragraph, accuses the Commission of acting as a “mini-FBI agency, abandoning its own purpose and being unable to prove any misconduct, simply playing “gotcha” with Shoemake, trying to exploit his testimony by claims that he attempted to mislead or that he was deceptive.”

WHEREFORE, the Commission prays that the portions of the Respondent’s Brief designated above be stricken from the record as disrespectful and contemptuous and that the Court take such further action as it deems proper.

Respectfully submitted, this the 7th day of August.

Respectfully submitted,
MISSISSIPPI COMMISSION ON
JUDICIAL PERFORMANCE
/s/ Darlene D. Ballard

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CERTIFICATE OF SERVICE

In compliance with Rule 25(d) of the Mississippi Rules of Appellate Procedure, I, Darlene D. Ballard, Executive Director for the Mississippi Commission on Judicial Performance, do hereby certify that I have this date electronically filed the foregoing Motion to Strike on behalf of the Mississippi Commission on Judicial Performance, with the Clerk of the Supreme Court of Mississippi using the MEC system which sent notification to the following:

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Further, I hereby certify that I have mailed by United States Postal Service the document to the following non-MEC participants:

Judge Lee J. Howard
Commission Chairman
660 North Street, Suite 104
Jackson, MS 39202

This the 7th day of August, 2015.

/s/ Darlene D. Ballard

Darlene D. Ballard